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08/720,091

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/720,091	09/27/96	SMITH	S 760-3

HOFFMANN AND BARON  
350 JERICHO TURNPIKE  
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33M1/0417

EXAMINER
NGUYEN, T

ART UNIT	PAPER NUMBER
3308	5

DATE MAILED: 04/17/97

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 27 September 1996

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire (3) three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-23 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-23 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: in Figure 6, element  $t_2'$ , as described on page 11, line 10. Correction is required.

### *Specification*

2. The disclosure is objected to because of the following informalities:
  - (1) On page 7, line 12, after "once" delete "the". In line 29, after "therethrough" insert -- can --.
  - (2) On page 10, line 16, fill in the blank space before "filed".
  - (3) On page 11, line 10, applicant has disclosed Figure 6 as showing transverse dimension  $t_2'$ ; however, Figure 7 shows transverse dimension  $t_2'$ , not Figure 6. Did applicant intend to disclose Figure 7? If so, please replace "Figure 6" with -- Figure 7 --. In line 18, after "in" insert -- a --.
  - (4) On page 12, line 31, after "such" replace "a" with -- as --.

Appropriate correction is required.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers et al. (WO Patent No. 95/05132) in view of Hubis (U.S. Patent No. 4,478,665), for the following reason:


(1) With respect to claims 1-23, Robinson discloses an intraluminal stent assembly comprising a radially expandable stent (10) having a longitudinal stent axis and a stent cover (20) positioned about said stent and being formed of expanded polytetrafluoroethylene (ePTFE), said stent cover being oriented in a first direction and expanded in a second direction transverse to said first so as to decrease the length of said stent cover from its original length, said longitudinal axis of said stent being aligned with said second direction, so that said stent cover is expandable in said first direction to its original length upon said radial expansion of said stent to control radial expanse of said stent (Fig. 6). Furthermore, the stent cover is wrapped about the stent and a seam (45) is formed by compression and adhesion of the overlapped edges of the stent cover (pages 7-9, Example 1). However, Myers et al. fails to disclose an unsintered expanded PTFE stent cover. Hubis teaches the use of unsintered or sintered ePTFE articles such as films, tubes or rods for medical use (col. 1, lines 20-30 and col. 3, lines 45-46). It would have been obvious to one of

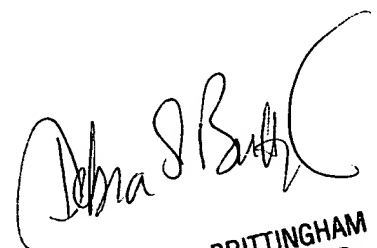
ordinary skill in the art at the time of the invention to make the stent cover of Myers et al. out of unsintered ePTFE, as taught by Hubis, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hubis (U.S. Patent No. 4,385,093), Bowman et al. (U.S. Patent No. 4,482,516), and Bowman (U.S. 4,598,011) also disclose the use of either sintered or unsintered ePTFE medical articles. Hess (U.S. Patent No. 5,197,978) and Gaterud et al. (U.S. Patent No. 5,522,882) and Robinson et al. (EP Patent No. 0 657 147 A2) also disclose a stent having a stent cover.

Any inquiry concerning this communication or earlier communications regarding this application should be directed to Tram Nguyen at (703) 308-0804/(703)305-3590 (FAX). If you are unable to reach me, please contact my supervisor, John Weiss, at (703) 308-2702. In a case requiring immediate assistance, please call (703) 308-0858 to reach the main operator.

  
TAN  
April 14, 1997

  
DEBRA S. BRITTINGHAM  
PRIMARY EXAMINER  
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